PRIVY COUNCIL REPORTS.

[PRIVY COUNCIL.]

(Appeal from the Supreme Court of Cyprus.)

LORD THANKERTON, LORD WRIGHT & SIR GEORGE RANKIN.

OTTOMAN BANK OF NICOSIA....Appellants.

vs.

OHANES CHAKARIAN.....Respondent.

[PRIVY COUNCIL APPEAL No. 56 of 1936.]

Master and servant—contract of service—retirement of servant—pension based on salary—currency—rate of exchange.

The respondent entered the service of the appellants in 1910, as a probationer at Nazli in Turkey, and was placed on the permanent staff in 1912. There was no written contract of employment, but the respondent signed a declaration that he would adhere strictly to the regulations governing the pension and superannuation fund adopted by the Direction Generale as forming an integral part of the conditions of his engagement. The contract of employment was governed by Turkish law and his salary was in Turkish pounds. Having served at the various branches of the appellant bank, the respondent was transferred from Athens to Cyprus where he remained in the appellants' service until 1931 when he retired on the terms that he was entitled to a pension in accordance with the pension regulations at the rate of 48 per centum of the fixed salary received by him on the 31st December of the previous year. His basic salary as expressed in Turkish money was Ltg. 30 a month. Before the war the currency authorised as legal tender by the Turkish Government was on a gold basis and the monetary unit was the gold pound. At the date of the contract the salary was paid to the respondent and other employees by means of that currency in gold coins, save as to fractional amounts. The Turkish currency had since depreciated in terms of gold. The respondent claimed to be paid his pension in Turkish gold pounds.

Held, that the respondent's contention amounted to introducing into the contract the effect of a "gold clause," although no such clause was anywhere expressly to be found in the transactions between the parties. A contract to pay so many pounds is not a contract to pay in gold, but is *prima facie* a contract to pay money according to the currency of the country where the payment has to be made. The contract in this case could not be construed to pay the respondent in gold, although gold was originally the normal form of legal tender.

Adelaide Electric Supply Co. v. *Prudential Assurance Co.*, (1934) A.C. 122 referred to and applied.

D. N. Pritt, Cyril Radcliffe. Colin Pearson, and *I. W. G. Barry* for the appellants.

Sir William Jowitt and *Kenelm Preedy* for the respondent.

The judgment of the Board was delivered by—

LORD WRIGHT.—The question in this appeal is the amount of pension to which the respondent is entitled on his retirement from the service of the appellants. His claim is that he is entitled to be paid his pension in Turkish gold pounds, by which is meant the current value of the bullion content of the Turkish gold coin (or its equivalent in the currency of Cyprus) at the appropriate rates of exchange. He succeeded in the Courts below, though there were considerable differences of judicial opinion. In the first Court which was the District Court, two Judges were in his favour while the third dissented. In the Supreme Court of Cyprus, there was again a division of opinion, Strong C.J. delivered a judgment in favour of the appellants, while Thomas J. was of the opposite opinion. The Court being equally divided, the judgment of the lower Court stood.

The appellants, now called the Ottoman Bank, previously called the Imperial Ottoman Bank, were established in 1863 by a Turkish Imperial Firman. The head office is at Istanbul, where its affairs are, and have been, administered by a Direction Generale subject to instructions given by a committee which meets both in London and Paris. The appellants have a great many branches. These were before the war mainly in various places in the Ottoman Empire. Many of these branches are now, since the war, in countries which no longer form part of that Empire. But it also had branches before the war in Greece, Cyprus, Syria and other countries. The respondent entered the service of the appellants in October 1910, as a probationer at Nazli in Turkey, and was placed on the permanent staff in October 1912. There was no written contract of employment, but he signed a declaration that he had taken knowledge of the regulations governing the pension and superannuation fund adopted by the Direction Generale and that he would adhere strictly to those regulations as forming an integral part of the conditions of his engagement. It is clear and is common ground that the contract of employment was governed by Turkish law and that his salary (what is described as his basic salary or his *traitement fixe*) was in Turkish pounds. He served in different parts of Turkey continuously (except for certain periods in 1916, 1917 and 1918, when he was absent on military service) until about October 1922. He was then for reasons connected with the war compelled to leave Smyrna and go to Athens. About the end of April 1923, he was transferred from Athens to Cyprus where he remained in the appellants' service until 1931 when he retired on the terms that he was entitled to a pension in accordance with the pension regulations at the rate of 48 per cent. of the fixed salary received by him on 31st December 1930. His basic salary as expressed in Turkish money was Ltq. 30 a month and his pension was accordingly Ltq. 14.40 per month. The question in the appeal is how that monthly pension is payable. As already stated, the respondent's contention is that he is entitled to be paid a fluctuating sum of money in currency sufficient to purchase the quantity of gold bullion which would have been

represented by these Turkish pounds on a gold basis. The pension regulations provide for the right of the employees to a pension on retirement subject to various conditions not here material, and the appellants bind themselves to maintain a pension fund to be fed from time to time by contributions from the employees of 4 per cent. of their fixed salary, together with half of any increments they receive in any year and by monthly contributions from the appellants of 6 per cent. of the salaries. In 1925, during the course of the respondent's service, the 4 per cent. was increased to 5 per cent. and the appellants' contribution was increased to 10 per cent. The articles of the regulations which are essentially material in this case are the following:

"*Article 14* which provides that the amount of the pension is fixed on the basis of the salary which the employee received on 31st December of the year preceding that in which he is retired.

Article 15—The amount of the pension will be calculated on the following basis: (1) For 10 years' service 30 per cent. of the annual fixed salary. (2) 2 per cent. for each of the subsequent years.

Article 16—In no case shall the amount of the pension exceed the three-quarters of the annual fixed salary. Nevertheless, neither can the pension be less than Ltq. 45 per annum for an employee, nor than Ltq. 25 per annum for a servant."

This last article shows that the basic salary on which the pension is based is to be expressed in Ltqs. and this is corroborated by Art. 22 which deals with widows' and orphans' pensions, and which states that any such pension cannot be less than Ltq. 25 per annum or more than Ltq. 300 per annum.

It is not suggested that there are to be found anywhere any contractual conditions which could be described as "a gold clause." The respondent's claim is based on the fact that before the war the currency authorized as legal tender by the Turkish Government was on a gold basis and the monetary unit was the gold pound, and that at the date of the contract the salary was paid to the respondent and other employees by means of that currency in gold coins, save as to fractional amounts. Assuming these facts, the conclusion is sought to be deduced that after the war and after, Turkey, like other countries, went off gold, still there was an original contractual obligation to pay in gold which existed throughout. In other words, this contention amounts to introducing into the contract the effect of a gold clause, a clause the nature of which has been discussed in several cases, though in fact no such clause is anywhere expressly to be found in the transactions between the parties. The respondent also sought to corroborate this conclusion by referring to the practice adopted by the Bank in paying the salaries of its employees in Turkey, in Cyprus and in other countries after the currency changes which were consequent on the war had taken place. The respondent contended that what was done in that way showed an intention throughout to pay the equivalent of gold coin. The appellants, on the contrary, relied on these same circumstances as showing that neither in fact nor in intention was the respondent ever paid on the basis of the gold content of Turkish pound, or on a gold parity.

Before examining in outline the nature of the different evidence, it will be necessary to advert briefly to the evidence of the Turkish currency law. As has already been stated, before the war the Turkish currency was on a gold basis and the gold £1 coins were in circulation as legal tender. In January 1915, the export of gold was prohibited and a series of Acts were passed in Turkey providing for a paper currency which should have a compulsory circulation as legal tender alongside of and as equivalent to gold, that is to say, the currency note for the Turkish £1 should be legal tender compulsorily alongside of and in place of the Turkish monetary unit which, in a decree of 1880 had been specified to be the gold £ of 100 piastres. These various enactments, each of which provided for the issue of a certain quantity of paper currency notes, were expressed to be temporarily in operation and provided for the redemption of those paper notes in gold after the war. That has never been done. In 1925 the existing notes then in circulation were replaced by a single issue of notes by the Government. At all material times since the commencement of the war, the paper notes have been legal tender and, although the gold £ is still legal tender, the paper currency has in accordance with Gresham's Law driven out from circulation the gold currency, so that in practice gold has ceased to circulate as legal tender. The Turkish gold coins are now, for all practical purposes, only dealt with as a commodity or bullion. This was very fully explained by the evidence of the experts on Turkish law and on the conditions of Turkish currency called by the appellants. The appellants also called a Turkish lawyer who stated in evidence that by Turkish law a contract made, say, in 1912, subject to Turkish law, to employ a man at Ltq. 20 a month would not be construed by that law as a contract to pay him 20 pieces of gold, even though gold was the normal form of the then legal tender, but as a contract to pay him Ltq. 20 in whatever might be legal tender in Turkey according to Turkish law at the material time. There was, said this witness, nothing before the war in Turkish law to say that Ltq. 4 salary was a contract meaning Ltq. 4 gold.

This evidence of the eminent Turkish lawyer was not shaken or contradicted and no good ground can be adduced for not accepting it. It is in fact in accordance with the English law on this point, which is now well established, particularly by some recent decisions. In *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.*, (1934) A.C. 122 a question arose as to the appropriate currency in which a certain debt should be discharged. The question there was not identical in form with the question here to be decided, but the House of Lords laid down certain principles which are of general application and are to be applied to the questions in this case. In particular, reference may be made to a statement by Lord Russell of Killowen at p. 148 where he expresses the difference between what is called a unit of account and the legal tender which corresponds to the unit of account. In the *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.* (*supra.*) case the question was what was the currency in which the debt was payable, whether English or Australian. Lord Russell said:

The question then, is, how can the Company discharge that indebtedness? The answer can I think only be, in whatever currency is legal tender in the place in which the indebtedness is dischargeable. It is not a question what amount of coins or other currency has the debtor contracted to pay. A debt is not incurred in terms of currency, but in terms of units of account.

The same view was expressed by this Board in a similar case—*Auckland Corporation* v. *Alliance Assurance Co.*, A.I.R. (1937) P.C. 54 at p. 65, where it is stated:

Contracts are expressed in terms of the unit of account, but the unit of account is only a denomination connoting the appropriate currency.

The unit of account must accordingly be applied to the appropriate currency which may vary from time to time. In the *Adelaide Electric Supply Co.* v. *Prudential Assurance Co.*, (*supra.*) case Lord Wright in his speech, p. 160, quoted as a correct statement of the law what was said by Maugham J. in *Broken-Hill Proprietary Co.* v. *Latham*, (1933) 1 Ch. 373 at p. 391:

A contract to pay so many pounds, whether a British or Australian contract, was not in 1920, and still less is now, a contract to pay in gold, but is *prima facie* a contract to pay money according to the currency of the country where payment has to be made.

These words are equally true of a case like the present where the question does not turn on a conflict between the currency of one country and another, the unit of account being identical in both, but where there has been a change in the currency of the country concerned. That type of case was dealt with in *In re Chestermans Trusts*; *Mott* v. *Browning*, (1923) 2 Ch. 466, where a mortgage debt in German reichsmarks contracted while Germany was on gold, was held by Russell J. and by the Court of Appeal to be dischargeable in depreciated German reichsmarks without reference to what country was the place of payment. Lord Sterndale said at p. 478, "if their (i.e. the mortgagees') rights are to be defined by German law, it must be that law as it exists from time to time." The effect of the respondent's contention, if acceded to, would be to construe a contract which did not contain a gold clause, exactly as if there were a gold clause expressed in it. The nature of a gold clause is now well established; it has been fully discussed in the decision of the House of Lords in *Feist* v. *Soctete Intercommunale Belge de' Electricite*, (1934) A.C. 161, and more recently in *Rex* v. *International Trustee*, (1937) A.C. 500, where it is pointed out by the Court of Appeal that gold clauses in bonds and obligations are very common in international contracts in every part of the world and that the construction of such clauses has now been definitely settled. It would indeed be a paradoxical result if it were now to be held that the gold clause is unnecessary, because it is to be implied in every contract which was made at a time when the a country was on gold and when payments were normally made on a gold basis. The gold clause was specifically designed to safeguard the rights of the creditors against the risk of the currency being changed and depreciated.

So far, this way of regarding the matter would appear to be conclusive against the respondent's contention and to dispose of the appeal in favour of the appellants. It is however necessary to examine with some care the practice of the appellants in paying their employees, and in particular the course which they adopted in Turkey in paying the respondent and other employees after the Turkish currency went off gold. Reliance is placed by the respondent on these facts as being, in a phrase which was used, exegetical of the contract and something like the principle of contemporaneous exposition was invoked. It is obvious that if the contract is clear and unambiguous, its true effect cannot be changed merely by the course of conduct adopted by the parties in acting under it. Such conduct if it is clear and unambiguous may in certain events raise the inference that the parties have agreed to modify their contract, but short of that such conduct cannot have the effect of changing the operation of an unambiguous agreement, though it might possibly in special cases support, along with other appropriate evidence, a claim for rectification. But the practice which is relied on here is not contemporaneous with the contract, and at the best is

ambiguous, whereas the contract is clear. In addition the practice seems to be only consistent, when properly understood, with the construction of the contract which their Lordships have just enunciated. The change in the Turkish currency became effective early in 1915, but for some time did not appear to affect the actual relations of the parties in regard to the payment of salary, while the respondent continued to serve in Turkey which was until 1923, subject to his military service and the short period which he spent at Athens. It will be convenient first to deal with what was done in Turkey in the payment of salaries to employees, including the respondent, in that country. Up to about May 1916, the appellants, notwithstanding the change in the currency law, elected to pay the fixed salaries to their employees in Turkey in gold at its face value. From then, save for a few months in which half the salaries were paid in gold and the other half in currency notes, until December 1919, they paid the fixed salaries in currency notes at their face value, but they made certain additional payments for practical reasons. By the latter part of 1916 the currency had seriously depreciated and the cost of living had enormously increased and it was accordingly necessary for the appellants to take some remedial measures to help their employees in Turkey who, if paid in the depreciated currency the amount of their fixed salary and nothing more, would have been unable to live. The appellants were naturally anxious not to change the fixed salaries because they thought the unfortunate conditions would be temporary and they sought to meet the conditions by paying in addition to the fixed salary certain additional emoluments which were variously called allowances, indemnities or gratifications: the fixed salary however was treated as constant and the contributions to the pension fund continued to be based on the fixed salary. The amount of these additional allowances varied from time to time and varied between one class of employee and another. They had no definite relation to the disproportion between gold and currency, nor had they the effect of paying to the employees sums in currency equivalent to what has been called the gold value of the fixed salary. It is unnecessary here to detail the elaborate calculations which the appellants adduced in order to prove this fact.

At the beginning of 1920 it was sought by the appellants to put the whole position on a more constant basis and the scheme was adopted, at first only for one year, that the employees in Turkey should be paid on the following basis—the basic salary in the Turkish currency was multiplied by a coefficient 110—100 and the product obtained, regarded as a notional sum in pounds sterling, was reconverted into Turkish currency at the average of the rates of exchange which had prevailed in the market during the previous three months between the pound sterling and Turkish currency; the sum in Turkish currency arrived at by these two arithmetical operations was with, in most cases, allowances, the sum paid to the employee. The rate of exchange for the previous three months was, in the first instance, taken as Ltq. 3.63 to the £ sterling. This was an average rate and was further removed from accuracy by the time lag. That method was, after a few months, varied by substituting a conventional figure of 4.51 as a rate of exchange and after a while the system became established to multiply the fixed salary by a fixed coefficient of 4.1 as representing 451/110. This method was adopted with the same object of maintaining unaltered the fixed salary, but increasing the payment in order to meet the increased expense of living, and it was sought to establish that position on a constant basis so long as circumstances might require. It is impossible to treat such a method as giving to the employees in fact or in intention the equivalent of gold. There are many reasons apart from the obvious purpose of the scheme as already stated. It is clear, in the first place, that at no period between 1920 and 1923 was sterling on a gold basis. For instance in 1920 when the scheme was first introduced in its original form, England was off the gold standard and sterling had depreciated in terms of gold to an extent of 20 per cent. to 25 per cent.; sterling did not again go on to gold until late in 1925. Further, the rate which was adopted and which eventually became standardised at 451 piastres to the £ sterling, was much lower than the current market rates which rose above 600 and eventually to a figure more than 800. Calculations have been adduced for the years 1921, 1922 and 1923 showing the disproportion between the actual salary payments made under this scheme as compared with what would have been the value in terms of fine gold of the fixed salary. Even if the additional allowances which were regularly made in addition to the payments on account of the fixed salary arrived at according to this system are taken into account, the total sums so paid to the employee are, in general, less, and sometimes much less, than what would have been the value of the gold content of the Turkish pound of fixed salary. It is enough here to state this conclusion without further discussing the detailed evidence.

The position so far is that no question of a change of practice arose until some years after the respondent's employment began, and because of the special conditions which supervened, and the practice which was adopted up to the time when the respondent went to Athens does not

in fact support the view that he was being paid his salary according to its gold equivalent. During the few months in which he was in Athens he was paid in drachmas on a conventional rate of exchange. When he went to Cyprus it was on the terms of a letter from the general management dated 31st March 1923, in which he was instructed to proceed to serve in Cyprus at the same salary of Ltq. 30 per month "which will be paid to you on the basis of the system customary in that island (*qui vous sera regle en base du regime usite dans cette ile*)." The respondent proceeded accordingly. The "*regime usite*" thus referred to was a practice which had long been adopted by the appellants in paying their employees in Cyprus; the practice was analogous to that which they had adopted in paying employees in other countries, such as Greece or Egypt, in which there was a currency different from the Turkish. The amount of the fixed salary was converted into Cyprus currency at a fixed coefficient 110 to 100: that practice, which prevailed before the war, was continued by the appellants after the war and notwithstanding the depreciation of the Turkish currency. It had the effect of making up to some extent the depreciation of the Turkish currency. It did not, however, put the payment of the Turkish salary when converted into Cyprus currency on a gold basis; in the first place sterling itself, as has already been pointed out, was not equivalent to gold; again the conventional coefficient 110 to 100 did not represent the true pre-war rate of exchange which varied between 109 and 111½, nor did it represent the true ratio between the two gold coins which was 110.69 to 100.

It is impossible, in their Lordships' judgment, to treat this method of paying salary as showing that the original contract was a contract to pay in gold coins. The ratio 110-100 had been adopted by the Bank for purposes of internal book keeping and had been adopted even before the war in paying its employees in Cyprus as a convenient and sufficiently accurate method and as such was continued for the reasons which have been stated, but not with any intention or effect of paying on a gold basis. The respondent's contribution to the pension fund which in Turkey had been paid on the converted figure of the fixed salary when that system was adopted, was in Cyprus paid on the actual salary payments in Cyprus currency and was no more on a gold basis than the salary itself. The respondent further contended that while he was in Cyprus, and in particular on the date of 30th December 1930, which was the date to be taken under the regulations for ascertaining his basic salary, what he was receiving was the equivalent of gold because he said, in Cyprus, during the years he was there the Cyprus currency notes which were equivalent to the sterling currency, were in fact interchangeable with gold. Indeed he said that occasionally he did actually get gold sovereigns from the Bank.

Their Lordships find that there is no justification for this view; the evidence is quite clear that the sovereign in Cyprus, as in England, was not used as currency. The records of the Bank show very few instances, negligible in amount, of sovereigns being paid or received. Hence this point may be disregarded. The precise effect of the letter of instructions, coupled with the respondent's action taken on that letter, has not been precisely elucidated in argument. It is not contested by the appellants that in respect of the Cyprus service they are bound to pay, and they are certainly willing to pay, the respondent in regard to his pension on the salary as based on the terms of that letter. It may be that there was in law a new and revised arrangement fixing the salary payable to him while in Cyprus on that particular basis. That however would not give the respondent any right to claim that his salary was on a gold basis. His rights would be to receive the fixed salary in Turkish currency converted by the artificial system which was adopted. This is what the appellants concede, but it would not, on any view, carry with it a right to be paid such an amount of Cyprus currency as would represent the gold value of Ltq. 14.40. Nor would any different result follow if the true view were that this arrangement was simply giving effect to the original bargain between the parties which, on this view, included the implied term that the *regime usite* was to apply if the respondent was ordered to go to Cyprus. It would seem that so far as salary was concerned, the *regime usite* only came into operation so long as the respondent was actually serving in Cyprus. It is not here necessary to determine what would happen as regards the pension if the respondent, while enjoying the pension, ceased to reside in Cyprus. At present he appears to have a permanent position there. It may be that the true view is that his pension once having been ascertained in the way in which it has been ascertained, would remain unaltered even though he were to leave Cyprus.

Their Lordships have not thought it necessary to refer specifically to the entries in the salary book which seem to them to accord with the view of the position just stated. It is however necessary to refer two further arguments which were put forward by Sir William Jowitt for the respondent. The first may be thus stated: "Taking the salary at the material date on which the pension is to be based at Ltq. 30 and taking the conventional coefficient of 110 to 100 and bearing in mind that Cyprus was on

gold parity at the material date, the true inference, it is contended, is that the Bank thereby designed to pay in Turkish gold, because the ratio had no meaning as applied to Turkish paper, in fact, at that time, the exchange of Turkish paper as against sterling was 900 or more." This argument, in their Lordships' judgment, entirely overlooks the whole history of the case and the method of evaluation according to which the actual payments were arrived at. In addition, it was, in the strict sense, merely accidental that the English £ was on gold in December, 1930. In the course of 1931, as is well-known, the £ went off gold and the sterling £ depreciated so that the sovereign was worth more than 30s. sterling. This again shows that the coefficient of conversion had no relation to gold.

A further point put forward by Sir William Jowitt was based upon the construction of the Turkish statutes which authorised the issue of currency notes and made them legal tender. These statutes were in terms limited to Turkish currency in Turkey. Sir William has contended that outside Turkey, pre-war currency law remained in effect, so that the legal tender outside Turkey remained the Turkish gold pound. Their Lordships are unable to accept this contention. The currency in any particular country must be determined by the law of that country and that law is naturally in terms limited to defining what is legal tender in that country. But when that is fixed by the local law, it determines what is the legal tender of that country for purposes of transactions in any other country, so that a foreign Court will, when such questions come before it, give effect to the proper law of legal tender so determined. There is no foundation in their Lordships' judgment for the argument that Turkish paper is only legal tender as equivalent to gold *sub modo*, that is, within the territorial limits of Turkish jurisdiction.

For these reasons their Lordships are of opinion that the appeal should be allowed. It is however necessary to refer to two recent judgments of this Board which appear to conflict with each other and one of which is in the result in conflict with the present decision. It will be convenient first to deal with the latter of these two cases, *Ottoman Bank of Nicosia* v. *Dascalopoulos*, (1934) A.C. 354. The Bank's employee, the plaintiff in that case, was serving in Cyprus when he became entitled to his pension in the latter part of 1932. It was held by this Board that he was entitled to succeed on his claim that the pension was payable in Turkish gold £ translated into Cyprus currency at the exchange rate of the day. The basis of their Lordships' decision was that the reference in the pension regulations to the Ltq. was a reference to Turkish gold £, on the ground, it seems, that the only Turkish gold £ in circulation was a gold coin of a special gold content. If this view of the true construction of the regulations could be regarded as a mere question of law, their Lordships might hesitate before differing from a previous decision of the Board though in this particular case it has to be observed that the Board in that decision were, in truth, themselves differing from an earlier decision of the Board as will be explained later. But the construction of the pension regulations depends on Turkish law which in the Cyprus Court is a question of fact and the Board in *Ottoman Bank of Nicosia* v. *Dascalopoulos* (*supra.*) had no evidence before them on Turkish law. They did not have the evidence which the Courts had before them in this case and which their Lordships now have before them, that according to Turkish law the pension regulations did not constitute a contract to pay in gold. This vital circumstance is enough to entitle and indeed compel their Lordships now to consider the case before them independently of *Ottoman Bank of Nicosia* v. *Dascalopoulos* (*supra*).

There are several other matters which also impose this duty upon the Board, for instance the evidence as to the Turkish currency law which has been given in the present case was not given in the previous case; the fact which the Board accepted as established before them, namely that in Cyprus in 1930 the Cyprus £ note and the sovereign were in practice interchangeable was negatived by the evidence in the present case. There are also various other matters of fact and evidence not here necessary to enumerate in detail, which compel this Board to examine the question of construction afresh in the light of the circumstances proved before them and material to be considered in deciding what is the true construction of the contract and also in understanding the practice adopted under the contract. These matters were not before the Board in *Ottoman Bank of Nicosia* v. *Dascalopoulos* (*supra*). It is thus not possible for the Board to hold, as was done in *Ottoman Bank of Nicosia* v. *Dascalopoulos* (*supra*) that the equivalent in Cyprus currency as obtained by the formula of the *regime usite* was or was intended to be a real equivalent of gold or that it was merely exegetical of a basic contract which was a gold contract.

It is necessary to consider one other case which recently came before this Board, *Ottoman Bank* v. *Chakarian*, (1930) A.C. 277. In that case, Chakarian, who had been an employee of the defendant Bank, sued in the Cyprus Court claiming that he was entitled to damages for wrongful dismissal from the Bank's service. At the date of his dismissal he had been serving in

Turkey. It was held by the Courts below and by this Board that his claim was justified and that he was entitled to damages. The question arose as to the correct amount of damages to be awarded to him on the footing that he was serving in Turkey at the material date. His salary had been paid according to the system in vogue in Turkey, the nature of which has been explained above. The effect of that system was to give a monthly salary expressed in terms of Turkish currency arrived at by converting into Turkish currency the sterling figure into which the basic salary had been converted by the conventional coefficient, presumably with due regard also to any extra allowances. The Board agreed with the majority of the Judges of the Supreme Court that this was the basis on which the pension to which Chakarian would have been entitled was to be calculated. There was no suggestion that the figures were to be taken as on a gold basis. The only point at issue was whether the rate of conversion of the figure of Turkish currency for the purpose of a decree in sterling was the rate current at the time of dismissal or that current at the date of the decree. The rate for the former date which was accepted as a true date was taken by agreement at 720 piastres to the pound. If this method was correct, as the Courts held that it was, it is evident that the matter was not dealt with as on the footing of a parity with gold. In *Ottoman Bank of Nicosia* v. *Dascalopoulos*, (*supra*), the Board did not, as their Lordships think, appreciate the effect of that decision which the Board regarded as showing that the salary was assumed to be, even in Turkey, a salary in Turkish gold pounds. Their Lordships now have had the advantage of the elaborate evidence on the Turkish currency law and are unable to accept that view. They agree with the decision of 1930 which is consistent with the decision they now arrive at in the present case, and is not consistent with the decision in *Ottoman Bank of Nicosia* v. *Dascalopoulos*, (*supra*).

In coming to the conclusion that the appeal should be allowed, the Board have had to consider what order should be made in their judgment on the question of costs. If the respondent were ordered to pay the costs as would be done in the ordinary course it would amount in effect to depriving him of his pension for the future and indeed in all probability to impose a much more serious liability. The appellants, however, through Mr. Pritt, have shown that they have appreciated what hardship to the respondent would be thus involved and have stated that they are willing to leave the question of costs to the untrammelled discretion of this Board. Their Lordships feel that this case should be treated as one of very exceptional character particularly because of the great conflict of judicial opinion, and of the importance of having a decision which may govern in future many other cases under the pension regulations. As the appellants have very fairly and generously left the matter to them, they feel justified in taking the view that no order should be made as to costs either here or below. Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, the judgments of both Courts in Cyprus set aside and the action dismissed.

Appeal allowed.

Solicitors for Appellants—*Bischoff, Coxe & Co.*

Solicitors for the Respondent—*Gisbourne & Co.*

[PRIVY COUNCIL]

(Appeal from the High Court of Judicature, Allahabad.)

LORD THANKERTON, SIR SHADI LAL & SIR GEORGE RANKIN.

December 20, 1937.

BABU MONMOHAN .....Appellant.

vs.

BALDEO NARAIN TANDON &..... ORS. .....Respondents.

[PRIVY COUNCIL No. 93 of 1934]

Limitation—money lent—banker's cheque endorsed in lender's favour—transfer of cheque to borrower—payment—period of limitation—Indian Limitation Act, 1908, First Schedule, Articles 57, 58.

Article 58 of the First Schedule to the Indian Limitation Act, 1908, which prescribes a period of three years for a suit for money lent when the lender has given a cheque for the money lent by him, applies to a case, in which the lender draws his own cheque. If he makes the loan by transfering to the borrower a cheque which had been drawn by another person and endorsed in his favour by the payee, the suit is governed by Article 57 and the period of limitation begins to run from the date on which the cheque is paid and the money passes into the hands of the borrower.

A cheque is paid when it is cashed by the lender's bankers. It is only then that the loan is made by the lender to the borrower. The mere handing over of a cheque by the lender to the borrower does not amount to a payment of the cheque.

The period, prescribed by Article 58, begins to run against the lender, not from the date when the cheque received by the borrower is given by him to his own bank, and the amount is credited to him by the bank, but from the date when the cheque is cashed.

Garden v. *Bruce*, (1868) L.R. 3 C.P. 300 referred to.

A. M. Dunne, K.C., and *Rashid* for the Appelant.

H. R. Abdul Majid and *Chinni Durai* for the Respondents.

Cur. Ad. Vult.

The judgment of the Board was delivered by—